

**CALIFORNIA WATER CODE**

**13050. Definitions.**

As used in this division:

- (a) “State board” means the State Water Resources Control Board.
- (b) “Regional board” means any California regional water quality control board for a region as specified in Section 13200.
- (c) “Person” includes any city, county, district, the state, and the United States, to the extent authorized by federal law.
- (d) “Waste” includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.
- (e) “Waters of the state” means any surface water or groundwater, including saline waters, within the boundaries of the state.
- (f) “Beneficial uses” of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.
- (g) “Quality of the water” refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.
- (h) “Water quality objectives” means the limits or levels of water quality constituents or characteristics of water which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.
- (i) “Water quality control” means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.
- (j) “Water quality control plan” consists of a designation or establishment for the waters within a specified area of all of the following:
  - (1) Beneficial uses to be protected.
  - (2) Water quality objectives.
  - (3) A program of implementation needed for achieving water quality objectives.

- (k) “Contamination” means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. “Contamination” includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.
- (l) (1) “Pollution” means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:
  - (A) The waters for beneficial uses.
  - (B) Facilities which serve these beneficial uses.
- (2) “Pollution” may include “contamination.”
- (m) “Nuisance” means anything which meets all of the following requirements:
  - (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
  - (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
  - (3) Occurs during or as a result of, the treatment or disposal of wastes.
- (n) “Recycled Water” means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.
- (o) “Citizen or domiciliary” of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.
- (p) (1) “Hazardous substance” means either of the following:
  - (A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).
  - (B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that “hazardous substances” does not include any substance excluded from Section 311(b)(2) of the Federal Water Pollution Control, Act because it is within the scope of Section 311(a)(1) of this act.

(2) “Hazardous substance” does not include any of the following:

- (A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.
- (B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.
- (C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.
- (D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q) (1) “Mining waste” means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, “cementitious material” means cement, cement kiln dust, clinker, and clinker dust.

(r) “Master recycling permit” means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and the water recycling requirements prescribed pursuant to Section 13523.1.

#### **13140. Policy Adoption.**

The state board shall formulate and adopt state policy for water quality control. Such policy shall be adopted in accordance with the provisions of this article and shall be in conformity with the policies set forth in Chapter 1 (commencing with Section 13000).

**13268. Civil Liability.**

- (a) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
- (b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.  
  
(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.
- (c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, knowingly failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or knowingly falsifying any information provided therein, is guilty of a misdemeanor and may be civilly liable in accordance with subdivision (d).

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370).

- (d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.  
  
(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

**13350. Civil Liability; amount; recovery**

- (a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged,

into the waters of the state, and creates a condition of pollution or nuisance, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be liable civilly in accordance with subdivision (d) or (e).

- (b) (1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state where it creates a condition of pollution or nuisance, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).
- (2) For purposes of this subdivision, the term "discharge" includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.
- (3) For purposes of this subdivision, the term "discharge" does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311 (a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).
- (c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:
  - (1) An act of war.
  - (2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
  - (3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.
  - (4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
  - (5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.
- (d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.

- (1) The civil liability on a daily basis may not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.
- (2) The civil liability on a per gallon basis may not exceed twenty dollars (\$20) for each gallon of waste discharged.
- (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.
  - (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.
  - (A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision
    - (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.
    - (B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.
  - (2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged. (f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.
- (g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining such amount, the court shall be subject to Section 13351.
- (h) The provisions of Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) of this chapter shall apply to proceedings to impose, assess, and recover an amount pursuant to this article.
- (i) Any person who incurs any liability established under this section shall be entitled to contribution for such liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission

of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

- (j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.
- (k) The state board shall submit an annual report to the Legislature which shall be available to the public, list all instances in which civil liability has been administratively imposed by a regional board in accordance with subdivision (e) during the preceding year, and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance.

## **PUBLIC RESOURCES CODE**

43101. The Legislature hereby finds and declares as follows:

...

(c) It is, therefore, the intent of the Legislature, in enacting this chapter, and in making the necessary revisions to this division and Division 7 (commencing with Section 13000) of the Water Code by the act enacting this chapter, to accomplish all of the following:

(1) As provided by Sections 40054 and 40055, the board, the state water board, and the regional water boards shall retain their appropriate statutory authority over solid waste disposal facilities and sites. A clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the board and the state water board and regional water boards, or between the board and any other state agency, as appropriate.

(2) The state water board and regional water boards shall be the sole agencies regulating the disposal and classification of solid waste for the purpose of protecting the waters of the state, consistent with Section 40055, and the board and the certified local enforcement agencies shall regulate all other aspects of solid waste disposal within the scope of their appropriate regulatory authority.

...

(4) The process and timeframe for the review and approval of the consolidated application shall be revised to allow, to the greatest extent feasible, for the concurrent development and review of the waste discharge requirements and the solid waste facilities permit....

...

(7) The closure and postclosure maintenance requirements of the board and the state water board for solid waste landfills shall be combined into one set of consolidated regulations which require one closure and postclosure maintenance plan to be prepared for each

solid waste landfill.

...

(11) Responsibility for establishing and enforcing financial responsibility requirements for solid waste landfills, from operation through to cleanup, shall, to the greatest extent practicable and consistent with applicable federal law, be consolidated into one set of regulations administered by the board, in consultation with the state water board.

(12) At a minimum, the financial assurance requirements for closure and postclosure maintenance shall be combined, and the requirements for corrective action and operating liability shall be reviewed, as required by subdivision (b) of Section 43040, to determine if there can be further consolidation of financial assurance requirements for solid waste landfills.

**(13) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator has failed to implement the required closure and postclosure activities or corrective action activities....**

## **PUBLIC RESOURCES CODE**

### **SECTIONS 43600-43610.1 (Financial Assurances)**

#### **43600.**

(a) Except as otherwise provided in subdivision (b), any person owning or operating a solid waste landfill, as defined in Section 40195.1, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for the cost of closure and postclosure maintenance, in an amount that is equal to the estimated cost of closure and 15 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

(b) On and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the **Code** of Federal Regulations, any person owning or operating a solid waste landfill, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for closure and postclosure maintenance, in an amount that is equal to the estimated cost of closure and 30 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

**43601.** (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) The owner or operator of a solid waste landfill shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the **Code** of Federal Regulations or through the use of any other mechanisms approved by the board. However, the board may adopt regulations that reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the evidence of financial ability submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section 13300) of Division 7 of the Water **Code** to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator of the solid waste landfill has failed to implement the required closure and postclosure activities or corrective action activities.

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the board only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved total costs of closure, postclosure maintenance, or corrective actions, as appropriate.

(e) If the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, the board may approve the insurance mechanism if it is in compliance with either paragraph (1) or (2) as follows:

(1) The issuer of the insurance policy is either:

(A) Licensed by the Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(B) Eligible to provide insurance as an excess and surplus lines insurer in California through a surplus lines broker currently licensed under the regulations of the Department of Insurance and upon the terms and conditions prescribed by the Department of Insurance.

(2) If the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, insurance may be approved by the board that meets all of the following requirements:

- (A) The insurance mechanism is in full compliance with the requirements for insurance that are specified in subdivision (d) of Section 258.74 of Title 40 of the **Code** of Federal Regulations.
- (B) The insurance carrier is an insurer domiciled in the United States and licensed in its state of domicile to write that insurance.
- (C) The insurance carrier only provides financial assurance to the operator that has established the insurance carrier as a form of self-insurance and does not engage in the business of marketing, brokering, or providing insurance coverage to other parties.
- (D) The insurance carrier shall maintain a rating of A- or better by A.M. Best, or other equivalent rating by any other agency acceptable to the board.
- (E) If requested by the board, an independent financial audit report evaluating the assets and liabilities of the insurance carrier and confirming compliance with the statutory and regulatory requirements of the state of domicile and an independent actuarial opinion on the independence and financial soundness of the insurance carrier by an actuary in good standing with the Casualty Actuarial Society or the American Academy of Actuaries regarding the adequacy of the loss reserves maintained by the insurance carrier shall be submitted to the board upon application and annually thereafter.

(f) A solid waste facility operator using or proposing to use an insurance company to demonstrate financial assurance may be required by the board to pay a fee for the actual and necessary cost of reviewing information submitted by the operator pursuant to paragraph (2) of subdivision (e) up to an amount not to exceed ten thousand dollars (\$10,000), unless a higher amount is mutually agreed to by the operator and the board.

(g) The funds collected pursuant to subdivision (f) shall be deposited in the Integrated Waste Management Account and shall be available, upon appropriation by the Legislature, for expenditure by the board to fund the review specified in subdivision (f).

#### **43601.5.**

(a) On or before March 1, 1994, the board shall review and revise regulations affecting solid waste landfill closure and postclosure financial assurances adopted in accordance with this article to make the regulations consistent with the requirements established pursuant to Subpart G (commencing with Section 258.1) of Part 258 of Subchapter I of

Chapter 1 of Title 40 of the **Code** of Federal Regulations, as amended on October 9, 1991.

(b) In reviewing and revising regulations pursuant to subdivision (a), the board shall, consistent with this division, and with federal law and regulations, endeavor to minimize the costs of compliance with those regulations by the owners and operators of public solid waste landfills and to provide flexible mechanisms for those owners and operators to comply with closure and postclosure financial assurance requirements, in order to ensure that adequate funding will be available for programs and projects that are necessary to comply with the diversion requirements of Section 41780.

**43602.**

(a) Except as provided in subdivision (b), evidence of financial ability required of an owner or operator of a solid waste landfill, as defined in Section 40195.1, shall be adjusted to equal the estimated costs of closure and 15 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

(b) On and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the **Code** of Federal Regulations, the evidence of financial ability required of an owner or operator of a solid waste landfill shall be adjusted to equal the estimated costs of closure and 30 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

**43603.**

The board shall not require an owner or operator of a disposal site to revise or amend a closure plan submitted pursuant to this section or former Section 66796.22 of the Government **Code** after closure of the landfill in order to reflect subsequent changes in any standards and regulations adopted by the board.

**43604.**

(a) During the closure and postclosure maintenance period, a solid waste landfill owner or operator shall maintain evidence of financial ability sufficient to pay postclosure maintenance costs, except that the owner or operator may request reimbursement for costs of postclosure maintenance as they are incurred if the remaining amount of funds is at least equal to the remaining postclosure maintenance cost.

(b) Notwithstanding the effective date of this section, owners and operators shall be required to comply with this section on the effective date of those regulations set forth in Part 258 (commencing with Section 258.1) of Title 40 of the **Code** of Federal Regulations.

**43605.**

Nothing in this division affects the authority of the State Water Resources Control Board to impose closure and postclosure maintenance requirements on disposal sites.

**43606.**

(a) Except for financial arrangements approved by the board pursuant to this article, no indemnification, hold harmless, or similar agreement or conveyance is effective to transfer from the owner or operator of a disposal site to any other person any obligations imposed on the owner or operator under this article.

(b) Notwithstanding subdivision (a), nothing in this section prohibits any agreement between the owner and the operator regarding their respective obligations for closure and postclosure maintenance of a disposal site, and nothing in this section prohibits a cause of action that an owner or operator has or would have against the other party by reason of that agreement.

**43610.**

(a) Notwithstanding Article 3 (commencing with Section 43500) or this article, a small city which operates a solid waste landfill, as defined in Section 40195.1, in Kings County, that is operational and, as of January 1, 1991, has been granted all required permits, is not required to submit a postclosure maintenance plan or to provide a fund for postclosure maintenance pursuant to Article 3 (commencing with Section 43500) or this article, if all of the following conditions are met:

- (1) The city has a population of less than 20,000 persons.
- (2) The solid waste landfill receives less than 20,000 tons of solid waste per year.
- (3) The water table of the highest aquifer under the solid waste landfill is 250 or more feet below the base of the solid waste landfill and the water in the highest aquifer is not potable.
- (4) The solid waste landfill receives less than an average of 12 inches of rainfall per year.
- (5) The solid waste landfill is closed in compliance with all state closure testing requirements at the time of closure.

(b) The exemption in subdivision (a) from the requirement to submit a postclosure maintenance plan shall become inoperative on the effective date of the federal regulations set forth in Subpart F (commencing with Section 258.60) of Part 258 of Title 40 of the **Code** of Federal Regulations, and the exemption in subdivision (a) from the requirement to provide a fund for postclosure maintenance shall become inoperative on the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the **Code** of Federal Regulations.

**43610.1.**

A disposal site owner or operator who meets the requirements of this article and its implementing regulations shall be deemed to have satisfactorily complied with all state requirements for financial ability to provide for closure and postclosure maintenance costs.